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(c) providing a second dispenser module in the enclosure and in movably supporting connection with the enclosure through a second [support] guide arrangement, wherein the second guide arrangement is adapted to guide the second dispenser module during movement, wherein the second and first [supports] guide arrangements are interchangeably engageable to support either the first or second dispenser modules, and wherein the second dispenser module includes a plurality of second medical items and is selectively operative to dispense the second medical items therefrom, wherein second medical items dispensed from the second dispenser module in the enclosure move to the delivery area; and

(d) dispensing at least one of a first or second medical item to the delivery area.

Remarks

Claims 40-44, 52-53, and 61 have been amended. Claims 40-62 are pending in the Application. No new matter has been added. All claim amendments are directed to and follow previously claimed subject matter. Reconsideration is respectfully requested.

35 U.S.C. § 112, First Paragraph, Rejection

In the Action, claims 49, 60, and 62 were rejected pursuant to 35 U.S.C. § 112, first paragraph. These rejections are respectfully traversed.

The Action indicates that the “dispensing of the support cards cannot be found within the specification.”

A discussion of a supporting card may be found in the Specification at page 16, line 16 to page 17, line 8; page 28, lines 3-7; and Figure 13. The Specification at page 16, line 16 to page

17, line 8 states “cards 72 with pills or capsules attached thereto are directed by the guides 58 on the inside of door 16 to fall downwardly into engagement with carom surface 60” and that the “dispensed medical items collect in pocket 56 until removed by a user.” For example, note Figures 2 and 13. Clearly, the disclosure describes that the card is adapted to act in a supporting manner. The disclosure describes the dispensing of a supporting card. It is respectfully submitted that the 35 U.S.C. § 112, first paragraph, rejections have been overcome.

35 U.S.C. § 112, Second Paragraph, Rejection

In the Action, claims 40-60 were rejected pursuant to 35 U.S.C. § 112, second paragraph. These rejections are respectfully traversed.

The Action indicates that using “or” creates vague and indefinite claims. The Action further indicates that these claims have been examined presuming the use of a Boolean “OR.”

The Applicants respectfully disagree that the use of the term “or” renders the claims indefinite. For example, claim 40 clearly recites either “adding” at least one medical item or “removing” at least one medical item. Claim 40 is not vague nor indefinite. Likewise, the other claims with the term “or” are not indefinite. The Action’s presumption of “or” was not necessary since “or” is already clearly recited in the claim. Furthermore, it is noted that the cited U.S. Patent 5,745,366, for example at claim 1, used the acceptable term “or.” Also, the cited U.S. Patent 5,805,456, for example at claim 51, used the acceptable term “or.”

The Action’s suggestion to restructure the “elements” if coverage encompassing alternative “elements” is sought is unclear, because the claims are method claims.

Nevertheless, to expedite prosecution, the Applicants would be willing to amend the current claim language of “adding or removing at least one medical item from the holder” to the language of “transferring at least one medical item from or to the holder”, with the approval of the Office.

It is respectfully submitted that the 35 U.S.C. § 112, second paragraph, rejections are not appropriate and withdrawal thereof is requested.

The Pending Claims Are Not Anticipated or Obvious in View of the Applied Art

Claims 40, 42, 43, and 46-47 were rejected under 35 U.S.C. § 102(e) as being anticipated by Higham et al. (“Higham”). Claims 40, 42, 43, 49-51, and 60-61 were rejected under 35 U.S.C. § 102(b) as being anticipated by Blechle. Claims 40-43, 46-47, 49, 52-54, 57-58, 60, and 62 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Higham. Claims 40-44, 46-49, 52- 60, and 62 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Higham in view of Kraft et al. (“Kraft”). Claims 40, 42-44, 46, 48-51, 55-56, and 59-62 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Blechle in view of Kraft. Claims 40-43, 46-47, 49-54, and 57-62 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Higham in view of Blechle. These rejections are respectfully traversed.

Brief Description of the Invention

The present invention is directed to a method performed in connection with a dispenser. In an exemplary embodiment of the invention the method is performed with a medical item dispenser (10). The dispenser may include an enclosure (12), a door (16) in operative connection

with the enclosure, and a path (54) extending in the enclosure. The path may be in connection with a delivery area (20), whereby dispensed medical items are accessible to a user in the delivery area. A dispenser module (24, 28, 30) may be movably mounted to be supported with the enclosure. The dispenser module may include a holder (124) for medical items, and a dispenser mechanism (76). The dispenser mechanism is selectively operable to dispense medical items from the holder at a dispense location (50, 52) positioned adjacent the path (54). When the door (16) is open, the holder is able to be moved outside the enclosure (12). The mounted dispenser module is movable to position the holder outside the enclosure. A medical item may be added or removed from the holder while the holder extends outside the enclosure. The dispenser module may be retracted to return the holder within the enclosure, and the door may be closed.

**The Applied References Do Not Disclose or Suggest
the Features and Relationships Recited in Applicant's Claims**

Anticipation pursuant to 35 U.S.C. § 102(b) requires that a single prior art reference contain all the elements of the claimed invention arranged in the manner recited in the claim. *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548, 220 USPQ 193, 198 (Fed. Cir. 1983).

Anticipation under 35 U.S.C. § 102(b) requires in a single prior art disclosure, each and every element of the claimed invention arranged in a manner such that the reference would literally infringe the claims at issue if made later in time. *Lewmar Marine, Inc. v. Barient, Inc.*, 822 F.2d 744, 747, 3 USPQ2d 1766, 1768 (Fed. Cir. 1987).

Before a claim may be rejected on the basis of obviousness pursuant to 35 U.S.C. § 103, the Patent Office bears the burden of establishing that all the recited features of the claim are known in the prior art. This is known as *prima facie obviousness*. To establish *prima facie* obviousness, it must be shown that all the elements and relationships recited in the claim are known in the prior art. MPEP § 2142.

Absent a showing of a teaching, suggestion or motivation to produce a claimed combination, an obviousness rejection is not proper. *Panduit Corp. v. Denison Mfg. Co.*, 810 F.2d 1561, 1568, 1 USPQ2d 1593 (Fed. Cir. 1987). *In re Newell*, 891 F.2d 899, 901, 902, 13 USPQ2d 1248, 1250 (Fed. Cir. 1989).

The teaching, suggestion or motivation to combine the features in prior art references must be clearly and particularly identified in such prior art to support a rejection on the basis of obviousness. It is not sufficient to offer a broad range of sources and make conclusory statements. *In re Dembiczak*, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

It is respectfully submitted that the Action does not meet these burdens.

Furthermore, the Action does not state in any way that is reasonably understandable by Applicants, where the specific features recited in Applicants' claims are allegedly found in the cited art. Not one rejection based on prior art has specifically labeled the claimed features allegedly found in the applied reference(s). Nor is there any citation to any alleged teaching, suggestion, or motivation to combine features of the prior art to produce the invention as claimed by Applicants. For this reason it is respectfully submitted that the Action fails to establish anticipation or a *prima facie* case of obviousness against any of the claims and the rejections should be withdrawn.

Because the Action fails to directly apply the references to the claims, Applicants have been unduly burdened by having to speculate as to possible rationales for the rejections. Applicants have reviewed the references cited and have determined for the reasons stated herein that the cited references, taken individually or as a whole, clearly do not teach or suggest the invention recited in Applicants' claims. Therefore, the claims directed to the present invention are not anticipated and would not have been obvious to one having ordinary skill in the art.

The Higham Reference

The reference to Higham is directed to a dispenser unit (28). The dispenser unit includes an enclosure with a plurality of drawers (32) slidably disposed with a frame (34). The drawers are provided with receptacles (36) for holding items. A row of buttons (30) is common to the drawers. As shown in Figure 2 the six buttons (30) correspond to the six receptacles (36) in each drawer (32). Each drawer has a sensor (40) for sensing when the drawer has been pulled out from the frame (34). The sensors (40) and buttons (30) are connected to a processor. When a particular drawer (44) is opened, the associated sensor (40) sends a signal to the processor indicating access to that drawer (32). The processor then sends a signal to set the buttons (30) to correspond to the receptacles (36) of that particular withdrawn drawer (32). An item is manually placed into or removed from a particular receptacle (36) of the withdrawn drawer (32). The button (30) having the same identification symbol (38) as the accessed receptacle (36) is manually touched to record the action in the processor. Inventory is maintained by using the associated buttons (30).

The Blechl Reference

The reference to Blechl is directed to a drug dispenser device (10). As shown in Figure 1, the dispenser device includes a drawer (28) which provides access to the dispensed medicines. When a user designates a type and quantity of desired medications into the input unit (248) of the control device (300), the medications drop from their cartridges (90) into the drawer (28). The input unit may include a user interface screen (30) having touch sensitive features in communication with a microprocessing means (26). The top of the device (10) is provided with a medication access door (40) permitting a designated user to stock the device.

As shown in Figure 2, the device (10) includes a medication storage area. A printed circuit board (50) has apertures (52, 54) allowing free fall of drug containers to the drawer (28). The board (50) includes female electrical connectors (56). Figures 3, 4, and 11 show a dispenser (60) made to be inserted into the medication storage area. Offset from the bottom of the dispenser (60) is a support lip (76) which rests against the printed circuit board (50) to support the dispenser (60). Extending downward from the support lip (76) is a male electrical connector (78) adapted to connect with a female electrical connector (56). A solenoid (68) is provided on the exterior of the dispenser housing (62). The solenoid (68) includes a piston (70) which is operatively connected to rotating linkage (72) which is contained on a pivot rod (74). The pivot rod (74) is secured to an arm (82) having a stepped portion (84). Actuation of the solenoid (68) causes rotation of pivot rod (74). Note Figures 10, 15, 17, and 18.

Figures 5-9 show a cartridge (90) for insertion into the dispenser (60). The cartridge (90) is sized to slide into the interior space (64) of the dispenser (60). Stacked medication containers (108) are contained in the interior storage space (102) of the cartridge (90). A retaining member

(110) prevents the medication containers (108) from falling out the open bottom (100) of the cartridge (90).

Upon insertion of the cartridge (90) into the dispenser (60), the user removes the retaining member (110) allowing free fall of the medication containers (108) to a dispensing platform (86) of the dispenser (60). The dispensing platform (86) has an aperture (88). Upon actuation of the solenoid (68), the stepped portion (84) urges the medication container (108) resting on the dispensing platform (86) out the aperture (88) where gravity induces it to falls to the drawer (28).

The Kraft Reference

The reference to Kraft is directed to a medication dispenser system. Each medication dispenser (12) stores medications (134) in specialized containers (90, 130). The system uses robotics (40) for manipulating a selected container (90, 130) to transfer medication units from the container directly to a package (314). In operation, the bulk medication container (130) is manipulated by the robotics (40) to place a single medication unit in a discharge holding area (152) of the container. A helical ridge (136) acts as a ramp for pills (134) in the container (130). The container is rotated to drop the medication unit into an opening (334) in a pocket (314) of a packaging system (38) where the unit is sealingly packaged. Particularly note Figures 6-9 and 26. A computer (46) of the system controller (34) requires identification from a user in order to access the dispenser (12) (col. 5, lines 8-14).

**The Features Recited in Applicant's Claims
Patentably Distinguish Over Higham**

In the Action claims 40, 42, 43, and 46-47 were rejected under 35 U.S.C. § 102(e) as being anticipated by Higham.

These rejections are respectfully traversed. Applicants traverse these rejections on the grounds that the Higham reference does not contain all the elements of the claimed invention arranged in the manner recited in the claims. The features recited in Applicants' claims patentably distinguish over the Higham reference.

Furthermore, the Action has not stated where the specific features of Applicants' claims are allegedly found in the Higham reference. The Office is respectfully asked to clearly state on the record which specific (numbered) features in the Higham reference directly correspond the claimed dispenser, enclosure, dispenser module, holder, dispenser mechanism, and medical item. The Action's failure to specifically indicate the presence of the recited claim features in the Higham reference constitutes Agency Action under the Administrative Procedures Act admitting that the reference does not meet the recited claim features. Allowance of the claims is respectfully request on this basis.

Claim 40

Claim 40 is an independent claim which is specifically directed to a method performed in connection with a dispenser. The claim specifically recites that the dispenser module "includes a holder enabling holding of medical items" and "a dispenser mechanism, wherein the dispenser mechanism is selectively operable to dispense medical items from the holder." Furthermore, the claim specifically recites that the dispenser module, while mounted, is movable "from a first

position, wherein the dispenser module is within the enclosure, to a second position, wherein the holder extends outside the enclosure.”

Higham does not disclose a dispenser module including a dispenser mechanism in the manner recited. Higham does not disclose a dispenser mechanism selectively operable to dispense medical items from the holder. Neither does Higham disclose the mounted dispenser module including a “holder” and “a dispenser mechanism”, and moving the mounted dispenser module in the manner recited.

In the operation of Higham, an item can be manually placed into or removed from a particular receptacle (36) of the withdrawn drawer (32) (col. 16, lines 37-45; col. 18, lines 43-47). Higham does not disclose a dispenser module including a “dispenser mechanism.” The recited “dispenser mechanism” is “selectively operable to dispense medical items from the holder.” Higham’s manual removal of items teaches away from using the recited “dispenser mechanism” to dispense medical items. Higham does not disclose a “dispenser” in the manner recited.

Higham does not disclose each and every element of the claimed invention arranged in the manner recited in the claims, as is required to sustain the objection. Hence, Applicants’ claim patentably distinguishes over the Higham reference. Therefore, it is respectfully submitted that the 35 U.S.C. § 102(e) rejection has been overcome. It follows that the claims which depend from claim 40 are likewise allowable.

**The Dependent Claims Recite Features Which Further
Patentably Distinguish Over Higham**

There are also a number of features that are expressly recited in claims that depend from claim 40 that further distinguish the preferred embodiment of the present invention over the cited art.

Therefore, Higham does not disclose each and every element of the claimed invention arranged in the manner recited in the claims, as is required for a valid rejection. Hence, Applicants' claims patentably distinguishes over the Higham reference. Therefore, it is respectfully submitted that the 35 U.S.C. § 102(e) rejections have been further overcome due to recitation of these additional features.

Claim 42

Claim 42 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites "manually adding or removing at least one medical item from the holder."

As previously discussed, Higham does not disclose a dispenser module including a "dispenser mechanism" in the manner recited. It follows that Higham does not disclose "manually adding or removing at least one medical item from the holder" in combination with a "dispenser mechanism" that is "selectively operable to dispense medical items from the holder." Thus, it is respectfully submitted that the claim is further allowable.

Claim 43

Claim 43 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites that "the dispenser

further includes a path extending in the enclosure, wherein the path is in connection with a delivery area, whereby medical items are accessible to a user in the delivery area, wherein the dispenser mechanism is selectively operable to dispense medical items from the holder at a dispense location.” Higham does not disclose such a “path” and “delivery area” and “dispense location” in the manner recited. Nor does Higham disclose the recited relationship of the “path” and “delivery area” and “dispense location.” Thus, it is respectfully submitted that the claim is further allowable.

Claim 46

Claim 46 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites that a “reference surface includes indicia thereon indicative of number of medical items in the holder.” The claim further recites “reading the indicia on the reference surface.” Higham does not disclose the “indicia” on a “reference surface” in the manner recited.

The Action alleges that Higham discloses reading indicia on a reference surface at col 5, lines 3-18. However, Higham at col 5, lines 3-18 does not disclose reading indicia on a reference surface. Higham does not disclose “indicia” or that a “reference surface includes indicia thereon” in the manner recited. Thus, it is respectfully submitted that the claim is further allowable.

Claim 47

Claim 47 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites that “the cover is prevented from moving to the up position when the dispenser module is in the first position.”

Higham does not disclose a “cover” in the manner recited. Thus, it is respectfully submitted that the claim is further allowable.

**The Features Recited in Applicant’s Claims
Patentably Distinguish Over Blechle**

In the Action claims 40, 42, 43, 49-51, and 60-61 were rejected under 35 U.S.C. § 102(b) as being anticipated by Blechle.

These rejections are respectfully traversed. Applicants traverse these rejections on the grounds that the Blechle reference does not contain all the elements of the claimed invention arranged in the manner recited in the claims. The features recited in Applicants’ claims patentably distinguish over the Blechle reference.

Furthermore, the Action has not stated where the specific features of Applicants’ claims are allegedly found in the Blechle reference. The Office is respectfully asked to clearly state on the record which specific (numbered) features in the Blechle reference directly correspond the claimed dispenser, enclosure, dispenser module, holder, dispenser mechanism, and medical item. The Action’s failure to specifically indicate the presence of the recited claim features in the Blechle reference constitutes Agency Action under the Administrative Procedures Act admitting that the reference does not meet the recited claim features. Allowance of the claims is respectfully requested on this basis.

Claim 40

Claim 40 is an independent claim which is specifically directed to a method performed in connection with a dispenser. The claim specifically recites that the dispenser module “includes a

holder enabling holding of medical items” and “a dispenser mechanism, wherein the dispenser mechanism is selectively operable to dispense medical items from the holder.” Furthermore, the claim specifically recites “moving the dispenser module, while mounted, from a first position, wherein the dispenser module is within the enclosure, to a second position, wherein the holder extends outside the enclosure.”

Blechle does not disclose a dispenser module including a dispenser mechanism in the manner recited. Blechle does not disclose a “dispenser module movably mounted in supporting connection with an enclosure.” Blechle does not disclose moving a “mounted” dispenser module including a “holder” and “a dispenser mechanism” in the manner recited.

Blechle shows a cartridge (90) for insertion into a dispenser (60). Stacked medication containers (108) are contained in the interior storage space (102) of the cartridge (90).

Blechle does not disclose a dispenser module being mounted in the manner recited. Blechle does not disclose a “mounted” dispenser module including a “holder” and “a dispenser mechanism” in the manner recited. Blechle does not disclose moving a dispenser module, while mounted, including a “holder” and “a dispenser mechanism” in the manner recited.

Blechle states that element (60) is the dispenser. However, the Action is silent as to what feature, if any, in Blechle is asserted to correspond to the recited dispenser module. Blechle’s drawer (28) cannot constitute the recited dispenser module because it does not include a “dispenser mechanism” in the manner recited.

Blechle’s cartridge (90) cannot constitute the recited dispenser module because it does not include a “dispenser mechanism” in the manner recited. Furthermore, the cartridge (90) is not “movably mounted in supporting connection with an enclosure.” Additionally, the cartridge

(90) does not include a “holder” and “a dispenser mechanism.” Additionally, the cartridge (90) is not “selectively operable to dispense medical items from the holder.” Additionally, the cartridge (90) is not moved while “mounted in supporting connection with an enclosure.” Additionally, the cartridge (90) does not include a “holder” and “a dispenser mechanism” while being moved and while being “mounted in supporting connection with an enclosure.” Additionally, the cartridge (90) is not capable of being moved, “while mounted” in supporting connection with an enclosure, from a first position “within the enclosure” to a second position, wherein the holder “extends outside the enclosure.”

Blechle’s dispenser (60) cannot constitute the recited dispenser module because it does not include a “holder enabling holding of medical items” and “a dispenser mechanism” in the manner recited. Additionally, the dispenser (60) is not capable of being moved, “while mounted” in supporting connection with an enclosure, from a first position “within the enclosure” to a second position, wherein the holder “extends outside the enclosure” in the manner recited.

Blechle does not disclose a dispenser module being mounted, in the manner recited. Blechle does not disclose a dispenser module capable of moving while being mounted, in the manner recited. Blechle does not disclose a “dispenser” in the manner recited.

Blechle does not disclose each and every element of the claimed invention arranged in the manner recited in the claims, as is required to sustain the objection. Hence, Applicants’ claim patentably distinguishes over the Blechle reference. Therefore, it is respectfully submitted that the 35 U.S.C. § 102(b) rejection has been overcome. It follows that the claims which depend from claim 40 are likewise allowable.

**The Dependent Claims Recite Features Which Further
Patentably Distinguish Over Blechle**

There are also a number of features that are expressly recited in claims that depend from claim 40 that further distinguish the preferred embodiment of the present invention over the cited art.

Therefore, Blechle does not disclose each and every element of the claimed invention arranged in the manner recited in the claims, as is required for a valid rejection. Hence, Applicants' claims patentably distinguishes over the Blechle reference. Therefore, it is respectfully submitted that the 35 U.S.C. § 102(b) rejections have been further overcome for these reasons.

Claim 42

Claim 42 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites “manually adding or removing at least one medical item from the holder.”

Blechle does not disclose “manually adding or removing at least one medical item from the holder” in the manner recited. Thus, it is respectfully submitted that the claim is further allowable.

Claim 43

Claim 43 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites that a “door is movable between a closed position wherein the door closes the opening, and an open position wherein the door is disposed away from the opening.” The claim further recites that “when the door is in the

open position the dispenser module is movable to the second position.” Blechle does not disclose the relationship of the “door” and the movement of the “dispenser module” in the manner recited. Thus, it is respectfully submitted that the claim is further allowable.

Claim 49

Claim 49 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites “a further dispenser module in the interior area” and “dispensing a first medical item including a supporting card from the dispenser module” and “dispensing a second medical item including a generally cylindrical liquid holding container from the further dispenser module.” Blechle does not disclose “a further dispenser module” or dispensing “a supporting card” in the manner recited. Thus, it is respectfully submitted that the claim is further allowable.

Claim 50

Claim 50 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites that “medical items are biased to move by gravitational force” and “providing a follower in engagement with the stack, wherein in the first position the follower provides additional biasing force on the stack.” Blechle does not disclose medical items “biased to move by gravitational force” and a “follower in engagement with the stack” in the manner recited. Thus, it is respectfully submitted that the claim is further allowable.

Claim 51

Claim 51 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites that “medical items are

biased to move by gravitational force” and a “movably positionable guide extending adjacent the stack” and a “generally cylindrical rotatably movable follower, including at least one annular groove, in operative engagement with the stack.” Blechle does not disclose medical items “biased to move by gravitational force” and a “movably positionable guide” and a “generally cylindrical rotatably movable follower” in the manner recited. Thus, it is respectfully submitted that the claim is further allowable.

Claim 60

Claim 60 depends from claim 53. In the Action, claim 53 was not anticipated by Blechle. It follows that claim 60 is not anticipated by Blechle.

Claim 60 further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites “a further dispenser module in the interior area” and “dispensing a first medical item including a supporting card from the dispenser module” and “dispensing a second medical item including a generally cylindrical liquid holding container from the further dispenser module.” Blechle does not disclose “a further dispenser module” or dispensing “a supporting card” in the manner recited. Thus, it is respectfully submitted that the claim is further allowable.

Claim 61

Claim 61 is an independent method claim. The claim specifically recites dispenser modules “in movably supporting connection with the enclosure” through guide arrangements, wherein the guide arrangements are adapted to guide the dispenser modules “during movement.” Blechle does not disclose a “guide arrangement” capable of supporting and guiding a dispenser

module during dispenser module movement, in the manner recited. Blechle does not disclose a dispenser module movable while in supporting connection with the enclosure.

Blechle does not disclose each and every element of the claimed invention arranged in the manner recited in the claims, as is required to sustain the objection. Hence, Applicants' claim patentably distinguishes over the Blechle reference. Therefore, it is respectfully submitted that the 35 U.S.C. § 102(b) rejection has been overcome. It follows that the claims which depend from claim 61 are likewise allowable.

The Pending Claims Are Not Obvious in View of the Applied Art

In the Action claims 40-43, 46-47, 49, 52-54, 57-58, 60, and 62 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Higham. These rejections are respectfully traversed.

Applicants traverse these rejections on the grounds that Applicant's claims recite features which are neither disclosed nor suggested in the prior art, and because there is no teaching, suggestion or motivation cited so as to produce Applicant's invention. The features recited in Applicant's claims patentably distinguish over the applied reference.

**Claims 40-43, 46-47, 49, 52-54, 57-58, 60, and 62
Patentably Distinguish Over the Applied Art**

The Action admits that Higham does not disclose the step of closing the door. The Action asserts that it would have been obvious to close the door in Higham.

The Applicants disagree. Higham lacks many of the recited features. Higham does not disclose or suggest the features and relationships that are specifically recited in the claims.

Claims 40, 42, 43, and 46-47 have already been discussed in regards to recited features not found in the Higham reference. Applicant's arguments concerning the Higham reference discussed above in support of the patentability of these claims are incorporated by reference as if fully rewritten herein.

As nothing in the Higham reference discloses nor suggests the features and relationships that are specifically recited in the claims, and because there is no teaching, suggestion or motivation cited for combining features of the cited reference so as to produce Applicant's invention, it is respectfully submitted that these claims are allowable for these reasons. Therefore, it is respectfully submitted that the 35 U.S.C. § 103(a) rejections have been overcome.

Claim 41

Claim 41 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites "moving the door of the enclosure from a closed position to an open position, wherein the holder is able to be moved outside the enclosure" and "closing the door." Higham does not disclose or suggest "moving the door" in the manner recited. Thus, it is respectfully submitted that the claim is further allowable.

Claim 49

Claim 49 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites "a further dispenser module in the interior area" and "dispensing a first medical item including a supporting card from the dispenser module" and "dispensing a second medical item including a generally cylindrical liquid holding container from the further dispenser module."

Higham does not disclose or suggest “a further dispenser module” or dispensing “a supporting card” in the manner recited. Higham also does not disclose or suggest dispensing a “liquid holding container.” The Action alleges that Higham shows a cylindrical holding container (260). However, there is no indication that this alleged container is a “liquid holding container” in the manner recited. Nevertheless, the container (260) is not capable of being dispensed in the manner recited. Thus, it is respectfully submitted that the claim is further allowable on this basis.

Claim 52

Claim 52 is an independent claim which is specifically directed to a method performed in connection with a medical item dispenser. The claim specifically recites that the dispenser module “includes a holder enabling holding of medical items” and “a dispenser mechanism, wherein the dispenser mechanism is selectively operable to dispense medical items from the holder.” Furthermore, the claim specifically recites that the dispenser module, while mounted in supportive connection with the enclosure, is movable “from a first position, wherein the dispenser module is within the enclosure, to a second position, wherein the holder extends outside the enclosure.”

Higham does not disclose or suggest a dispenser module including a dispenser mechanism in the manner recited. Higham does not disclose or suggest a dispenser mechanism selectively operable to dispense medical items from the holder. Neither does Higham disclose or suggest the mounted dispenser module including a “holder” and “a dispenser mechanism”, and moving the mounted dispenser module in the manner recited.

In the operation of Higham, an item can be manually placed into or removed from a particular receptacle (36) of the withdrawn drawer (32) (col. 16, lines 37-45; col. 18, lines 43-47). Higham does not disclose or suggest a dispenser module including a “dispenser mechanism.” The recited “dispenser mechanism” or Applicants’ claim is “selectively operable to dispense medical items from the holder.” Higham’s manual removal of items teaches away from using the recited “dispenser mechanism” to dispense medical items. Higham does not disclose or suggest a “dispenser” in the manner recited.

As nothing in the Higham reference discloses nor suggests the features and relationships that are specifically recited in the claim, and because there is no teaching, suggestion or motivation cited for combining features of the cited reference so as to produce Applicant’s invention, it is respectfully submitted that the claim is allowable for these reasons. Therefore, it is respectfully submitted that the 35 U.S.C. § 103(a) rejection has been overcome.

Claim 53

Claim 53 is an independent claim which is specifically directed to a method performed with a medical item dispenser apparatus. The claim specifically recites that the dispenser module “includes a holder, wherein the holder enables holding the medical items” and “a dispenser mechanism, wherein the dispenser mechanism is selectively operable to dispense medical items from the holder.” Furthermore, the claim specifically recites that the dispenser module, while mounted, is movable “from a first position, wherein the dispenser module is within the enclosure, to a second position, wherein the holder extends outside the enclosure.”

Higham does not disclose or suggest a dispenser module including a dispenser mechanism in the manner recited. Higham does not disclose or suggest a dispenser mechanism

selectively operable to dispense medical items from the holder. Neither does Higham disclose nor suggest a mounted dispenser module including a “holder” and “a dispenser mechanism”, and moving the mounted dispenser module in the manner recited.

In the operation of Higham, an item can be manually placed into or removed from a particular receptacle (36) of the withdrawn drawer (32) (col. 16, lines 37-45; col. 18, lines 43-47). Higham does not disclose or suggest a dispenser module including a “dispenser mechanism.” The recited “dispenser mechanism” is “selectively operable to dispense medical items from the holder.” Higham’s manual removal of items teaches away from using the recited “dispenser mechanism” to dispense medical items. Higham does not disclose or suggest a “dispenser” in the manner recited.

As nothing in the Higham reference discloses nor suggests the features and relationships that are specifically recited in the claim, and because there is no teaching, suggestion or motivation cited for combining features of the cited reference so as to produce Applicant’s invention, it is respectfully submitted that the claim is allowable for these reasons. Therefore, it is respectfully submitted that the 35 U.S.C. § 103(a) rejection has been overcome.

Claim 54

Claim 54 depends from claim 53 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites “manually adding or removing at least one medical item from the holder.” Higham does not disclose or suggest “manually adding or removing at least one medical item from the holder” in the manner recited. Thus, it is respectfully submitted that the claim is further allowable.

Claim 57

Claim 57 depends from claim 53 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites that a “reference surface includes indicia thereon indicative of number of medical items in the holder.” The claim further recites “reading the indicia on the reference surface.” Higham does not disclose or suggest the “indicia” on a “reference surface” in the manner recited.

The Action alleges that Higham discloses reading indicia on a reference surface at col 5, lines 3-18. However, Higham at col 5, lines 3-18 does not disclose or suggest reading indicia on a reference surface. Higham does not disclose or suggest “indicia” or that a “reference surface includes indicia thereon” in the manner recited. Thus, it is respectfully submitted that the claim is further allowable.

Claim 58

Claim 58 depends from claim 53 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites that “the cover is prevented from moving to the up position when the dispenser module is in the first position.” Higham does not disclose or suggest a “cover” in the manner recited. Thus, it is respectfully submitted that the claim is further allowable.

Claim 60

Claim 60 depends from claim 53 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites “a further dispenser module in the interior area” and “dispensing a first medical item including a supporting card

from the dispenser module” and “dispensing a second medical item including a generally cylindrical liquid holding container from the further dispenser module.”

The Action alleges that Higham discloses dispensing a supporting card from the module (col 18, lines 1-15; Figure 3, #52). However, Higham’s item (52) is a catheter. Higham does not disclose or suggest “a further dispenser module” or dispensing “a supporting card” in the manner recited. Thus, it is respectfully submitted that the claim is further allowable.

Claim 62

Claim 62 depends from claim 61. In the Action, claim 61 was not rejected under 35 U.S.C. § 103(a) as being unpatentable over Higham. It follows that claim 62 is not unpatentable over Higham.

Claim 62 further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites “dispensing a first medical item including a supporting card from the first dispenser module.”

As previously discussed, Higham does not disclose or suggest dispensing a supporting card from a dispenser module. Thus, it is respectfully submitted that the claim is further allowable.

The Pending Claims Are Not Obvious in View of the Applied Art

In the Action claims 40-44, 46-49, 52-60, and 62 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Higham in view of Kraft. These rejections are respectfully traversed.

Applicants traverse these rejections on the grounds that Applicant’s claims recite features which are neither disclosed nor suggested in the prior art, and because there is no teaching,

suggestion or motivation cited so as to produce Applicant's invention. The features recited in Applicant's claims patentably distinguish over the applied references.

Claims 40-44, 46-49, 52-60, and 62
Patentably Distinguish Over the Applied Art

The Office Action admits that Higham does not disclose "engaging a helix within the holder a rotating mechanism"; "engaging a holder guide"; "placing a medical item in engagement with each of a pair of helixes"; and "extending a limiting member within the inside of the helix." The Office Action asserts that Kraft discloses such features. The Office Action further asserts that it would have been obvious for Higham to have such features.

The Applicants disagree. Higham lacks many of the recited features. Higham does not disclose or suggest the features and relationships that are specifically recited in the claims. Kraft lacks the capability of adding the recited features that are not found in Higham. Neither Higham nor Kraft alone or in combination disclose or suggest the features and relationships that are specifically recited in the claims.

As nothing in the cited references disclose nor suggest the features and relationships that are specifically recited in the claims, and because there is no teaching, suggestion or motivation cited for combining features of the cited references so as to produce Applicant's invention, it is respectfully submitted that these claims are allowable for these reasons. Therefore, it is respectfully submitted that the 35 U.S.C. § 103(a) rejections should be withdrawn.

Claims 40-43, 46-47, 49, 52-54, 57-58, 60, and 62

Applicant's arguments concerning the Higham reference discussed above in support of the patentability of claims 40-43, 46-47, 49, 52-54, 57-58, 60, and 62 are incorporated by

reference as if fully rewritten herein. Kraft does not disclose or suggest the features or relationships that are not found in Higham.

As previously discussed, in the operation of Higham, an item can be manually placed into or removed from a particular receptacle (36) of the withdrawn drawer (32) (col. 16, lines 37-45; col. 18, lines 43-47). Higham does not disclose or suggest a dispenser module including a “dispenser mechanism.” The recited “dispenser mechanism” of Applicants’ claim is “selectively operable to dispense medical items from the holder.” Higham’s manual removal of items teaches away from using the recited “dispenser mechanism” to dispense medical items.

Kraft’s packaging system uses robotics (40) for manipulating a selected container (90, 130) to transfer medication units from the container directly to a package (314). In operation, the bulk medication container (130) is manipulated by the robotics (40) to place a single medication unit in a discharge holding area (152) of the container. A helical ridge (136) acts as a ramp for pills (134) in the container (130). The container is rotated to drop the medication unit into an opening (334) in a pocket (314) of a packaging system (38) where the unit is sealingly packaged.

Kraft’s system uses robotics (40) to sealing package a medication unit. In Higham an item is manually placed or removed from a drawer. Therefore, it would not have been obvious to modify Higham as alleged.

The Action is silent as to what feature, if any, in Kraft constitutes the alleged helix. It is unclear whether Kraft’s helical ridge (136) is the alleged helix. Nevertheless, Kraft’s helical ridge (136) acts as a ramp for pills (134) in the container (130). The container is rotated to drop the medication unit into an opening (334) in a pocket (314) of a packaging system (38). Hence, the helical ridge (136) is used in the packaging of medication. In Higham a medical item is not

capable of being dropped to a lower location. In Higham's operation a drawer is opened and an item is manually removed. In Higham there is no dispenser mechanism because the items are manually removed from the drawer. Hence, Higham has no need or desire for the recited helix.

Furthermore, the robotic packaging system of Kraft is contrary to the manual drawer system of Higham. Any attempt to incorporate a helix into Higham is clearly an attempt at hindsight reconstruction of Applicants' claimed invention, which is impermissible. Furthermore, the Action has not shown any reason or motivation to combine, or explained how a helix could be incorporated into the manually operated drawer system of Higham. Furthermore, the Action has not shown any reason or motivation why one skilled in the art would attempt to incorporate a helix into the manually operated drawer system of Higham. When a drawer of Higham is opened, then the items are readily accessible. A helix, even if it were somehow possible to install in Higham, would serve no purpose. Thus, Higham would not be improved with the addition of a helix. Clearly, one skilled in the art would not have any reason to have attempted to incorporate a helix into the manually operated drawer system of Higham. Any alleged modification involving a helix, if it were even somehow possible, would appear to destroy the utility or advantage of Higham and render the disclosed device of Higham inoperable.

A reference teaching away from the recited invention does not support *prima facie* obviousness. It is improper to reconstruct the invention from the disclosure of the Applicants. An obviousness rejection cannot be based on a combination of features in references if making the combination would result in destroying the utility or advantage of the device shown in the prior art references. *In re Fine* 5 USPQ2d 1598-99 (Fed. Cir. 1988). As the combination of

features asserted in the Action would destroy the utility and advantages of the cited references it is respectfully submitted that the rejection is improper and should be withdrawn.

In regard to claims 52 and 53 Higham additionally lacks the recited path and delivery area. The arrangement of Higham's drawer system cannot support the features and relationships of a path and a delivery area. Therefore, even if Kraft disclosed these features and relationships, it would not have been obvious to have included these features and relationships into Higham.

Neither Higham nor Kraft alone or in combination disclose or suggest the features and relationships that are specifically recited in the claims.

As nothing in the cited art discloses nor suggests the features and relationships that are specifically recited in the claim, and because there is no teaching, suggestion or motivation cited for combining features of the cited references so as to produce Applicant's invention, it is respectfully submitted that the claim is allowable for these reasons. Therefore, it is respectfully submitted that the 35 U.S.C. § 103(a) rejection has been overcome. It follows that the claims which depend from these claims are likewise allowable.

Claim 44

Claim 44 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites "the holder includes the helix." The claim further recites "engaging a holder guide in operative connection with the dispenser module, wherein a first portion of the holder guide is extended in an inside area within the helix and a second portion of the holder guide extends in an exterior area outside of the helix." Neither Higham nor Kraft alone or in combination disclose or suggest that a "holder includes the helix" and a "holder guide" in the manner recited. The Action references Kraft at

col. 8, lines 25-67. However, this referenced section of Kraft lacks the recited “helix” and “holder guide.” Thus, it is respectfully submitted that the claim is further allowable.

Claim 48

Claim 48 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites that “the holder includes a rotatable helix.” The claim further recites “extending a limiting member in the inside area of the helix, wherein the limiting member is operative to prevent a medical item from passing through the inside area of the helix absent rotation of the helix.” Neither Higham nor Kraft alone or in combination disclose or suggest a “rotatable helix” and a “limiting member” in the manner recited. The Action references Kraft at col. 8, lines 25-67. However, this referenced section of Kraft lacks the recited “rotatable helix” and “limiting member.” Thus, it is respectfully submitted that the claim is further allowable.

Claim 55

Claim 55 depends from claim 53 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites “the holder includes the helix.” The claim further recites “engaging a holder guide in operative connection with the dispenser module, wherein a first portion of the holder guide is extended in an inside area within the helix and a second portion of the holder guide extends in an exterior area outside of the helix.” Neither Higham nor Kraft alone or in combination disclose or suggest that a “holder includes the helix” and a “holder guide” in the manner recited. The Action references Kraft at col. 8, lines 25-67. However, this referenced section of Kraft lacks the recited “helix” and “holder guide.” Thus, it is respectfully submitted that the claim is further allowable.

Claim 56

Claim 56 depends from claim 53 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites “the holder includes a pair of rotatable helixes.” Neither Higham nor Kraft alone or in combination disclose or suggest that a “holder includes a pair of rotatable helixes” in the manner recited. The Action references Kraft at col. 5, lines 21-37; col. 7, lines 26-38; and col. 8, lines 25-67. However, these referenced sections of Kraft lacks the recited “pair of rotatable helixes.” Thus, it is respectfully submitted that the claim is further allowable.

Claim 59

Claim 59 depends from claim 53 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites that “the holder includes a rotatable helix.” The claim further recites “extending a limiting member in the inside area of the helix, wherein the limiting member is operative to prevent a medical item from passing through the inside area of the helix absent rotation of the helix.” Neither Higham nor Kraft alone or in combination disclose or suggest a “rotatable helix” and a “limiting member” in the manner recited. The Action references Kraft at col. 8, lines 25-67. However, this referenced section of Kraft lacks the recited “rotatable helix” and “limiting member.” Thus, it is respectfully submitted that the claim is further allowable.

The Pending Claims Are Not Obvious in View of the Applied Art

In the Action claims 40, 42-44, 46, 48-51, 55-56, and 59-62 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Blechle in view of Kraft. These rejections are respectfully traversed.

Applicants traverse these rejections on the grounds that Applicant's claims recite features which are neither disclosed nor suggested in the prior art, and because there is no teaching, suggestion or motivation cited so as to produce Applicant's invention. The features recited in Applicant's claims patentably distinguish over the applied references.

**Claims 40, 42-44, 46, 48-51, 55-56, and 59-62
Patentably Distinguish Over the Applied Art**

The Office Action admits that Blechle does not disclose "engaging a helix within the holder a rotating mechanism"; "engaging a holder guide"; "placing a medical item in engagement with each of a pair of helixes"; and "extending a limiting member within the inside of the helix." The Office Action asserts that Kraft discloses such features. The Office Action further asserts that it would have been obvious for Blechle to have such features.

The Applicants disagree. Blechle lacks many of the recited features. Blechle does not disclose or suggest the features and relationships that are specifically recited in the claims. Kraft lacks the capability of adding the recited features that are not found in Blechle. Neither Blechle nor Kraft alone or in combination disclose or suggest the features and relationships that are specifically recited in the claims.

As nothing in the cited references disclose nor suggest the features and relationships that are specifically recited in the claims, and because there is no teaching, suggestion or motivation

cited for combining features of the cited references so as to produce Applicant's invention, it is respectfully submitted that these claims are allowable for these reasons. Therefore, it is respectfully submitted that the 35 U.S.C. § 103(a) rejections have been overcome.

Claims 40, 42-43, 49-51, and 60-61

Applicant's arguments concerning the Blechle reference discussed above in support of the patentability of claims 40, 42-43, 49-51, and 60-61 are incorporated by reference as if fully rewritten herein. Kraft does not disclose or suggest the features or relationships that are not found in Blechle.

As previously discussed, Blechle shows a cartridge (90) for insertion into a dispenser (60). Stacked medication containers (108) are contained in the interior storage space (102) of the cartridge (90). Upon actuation of the solenoid (68), the stepped portion (84) urges the medication container (108) resting on the dispensing platform (86) out the aperture (88) where gravity induces it to fall to the drawer (28).

As previously discussed, Blechle does not disclose a dispenser module being mounted in the manner recited. Blechle does not disclose a "mounted" dispenser module including a "holder" and "a dispenser mechanism" in the manner recited. Blechle does not disclose moving a dispenser module, while mounted, including a "holder" and "a dispenser mechanism" in the manner recited. Kraft does not disclose or suggest the features or relationships that are not found in Blechle.

Kraft's packaging system uses robotics (40) for manipulating a selected container (90, 130) to transfer medication units from the container directly to a package (314). In operation, the bulk medication container (130) is manipulated by the robotics (40) to place a single medication

unit in a discharge holding area (152) of the container. A helical ridge (136) acts as a ramp for pills (134) in the container (130). The container is rotated to drop the medication unit into an opening (334) in a pocket (314) of a packaging system (38) where the unit is sealingly packaged.

Furthermore, the robotic packaging system of Kraft to sealingly package a medication unit is contrary to the system of Blechle. Any attempt to incorporate a helix into the structure of Blechle is clearly an attempt at hindsight reconstruction of Applicants' claimed invention, which is impermissible. Furthermore, the Action has not cited any teaching or motivation to include, or explained how a helix could be incorporated into the system of Blechle. Furthermore, the Action has not explained why one skilled in the art would in any way be motivated to attempt to incorporate a helix into the system of Blechle. In Blechle, when the solenoid (68) is actuated the stepped portion (84) pushes the medication container (108) out the cartridge (90). A helix, even if it were somehow possible to install in Blechle, would serve no purpose. The Action has not explained how a helix could be incorporated into the cartridge (90) of Blechle. Thus, Blechle would not be improved with the addition of a helix. Clearly, one skilled in the art would not have attempted to incorporate a helix into the system of Blechle. Any alleged modification involving a helix, if it were somehow even possible, would appear to destroy the utility or advantage of Blechle and render the disclosed device of Blechle inoperable.

A reference teaching away from the recited invention does not support prima facie obviousness. It is improper to reconstruct the invention from the disclosure of the Applicants. An obviousness rejection cannot be based on a combination of features in references if making the combination would result in destroying the utility or advantage of the device shown in the

prior art references. *In re Fine* 5 USPQ2d 1598-99 (Fed. Cir. 1988). It is respectfully asserted that the rejection is not appropriate.

Furthermore, even if it were somehow possible for Blechle to add the features of Kraft, Blechle would still lack the recited features and relationships of the dispenser module being movably mounted in the manner recited. Blechle would not disclose a “mounted” dispenser module including a “holder” and “a dispenser mechanism” in the manner recited. Blechle would not disclose moving a dispenser module, while mounted, including a “holder” and “a dispenser mechanism” in the manner recited. Hence, Kraft does not disclose or suggest the recited features and relationships that are also not found in Blechle.

Additionally, in regard to claim 60, neither Blechle nor Kraft alone or in combination disclose or suggest “a further dispenser module” and dispensing “a supporting card” in the manner recited. Furthermore, even if Kraft disclosed these features and relationships, it would not have been obvious to have included these features and relationships into Blechle. Neither Blechle nor Kraft alone or in combination disclose or suggest “moving the mounted dispenser module from the first position to the second position” in the manner recited. Furthermore, even if it were somehow possible for Blechle to add the features of Kraft, Blechle would still lack the recited features and relationships of the dispenser module being movably mounted in the manner recited.

Additionally, in regard to claim 61, neither Blechle nor Kraft alone or in combination disclose or suggest a “guide arrangement” capable of supporting and guiding a dispenser module during dispenser module movement, in the manner recited. Furthermore, even if Kraft disclosed these features and relationships, it would not have been obvious to have included these features

and relationships into Blechle. Neither Blechle nor Kraft alone or in combination disclose or suggest a dispenser module movable while in supporting connection with an enclosure, in the manner recited. Furthermore, even if it were somehow possible for Blechle to add the teachings of Kraft, Blechle would still lack the recited features and relationships of the dispenser module being movable while in supporting connection with the enclosure in the manner recited.

Neither Blechle nor Kraft alone or in combination disclose or suggest the features and relationships that are specifically recited in the claims.

As nothing in the cited art discloses nor suggests the features and relationships that are specifically recited in Applicants' claims, and because there is no teaching, suggestion or motivation cited for combining features of the cited references so as to produce Applicant's claimed invention, it is respectfully submitted that the claims are allowable for these reasons. Therefore, it is respectfully submitted that the 35 U.S.C. § 103(a) rejection has been overcome.

Features recited in other claims further patentably distinguish over the applied art.

Claim 44

Claim 44 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied references. The claim specifically recites "the holder includes the helix." The claim further recites "engaging a holder guide in operative connection with the dispenser module, wherein a first portion of the holder guide is extended in an inside area within the helix and a second portion of the holder guide extends in an exterior area outside of the helix." Neither Blechle nor Kraft alone or in combination disclose or suggest that a "holder includes the helix" and a "holder guide" in the manner recited. The Action references

Kraft at col. 8, lines 25-67. However, this referenced section of Kraft lacks the recited “helix” and “holder guide.” Thus, it is respectfully submitted that the claim is further allowable.

Claim 46

Claim 46 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites that a “reference surface includes indicia thereon indicative of number of medical items in the holder.” The claim further recites “reading the indicia on the reference surface.” Neither Blechle nor Kraft alone or in combination disclose or suggest “indicia” on a “reference surface” in the manner recited. Thus, it is respectfully submitted that the claim is further allowable.

Claim 48

Claim 48 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites that “the holder includes a rotatable helix.” The claim further recites “extending a limiting member in the inside area of the helix, wherein the limiting member is operative to prevent a medical item from passing through the inside area of the helix absent rotation of the helix.” Neither Blechle nor Kraft alone or in combination disclose or suggest a “rotatable helix” and a “limiting member” in the manner recited. The Action references Kraft at col. 8, lines 25-67. However, this referenced section of Kraft lacks the recited “rotatable helix” and “limiting member.” Thus, it is respectfully submitted that the claim is further allowable.

Claim 55

Claim 55 depends from claim 53 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites “the holder includes the

helix.” The claim further recites “engaging a holder guide in operative connection with the dispenser module, wherein a first portion of the holder guide is extended in an inside area within the helix and a second portion of the holder guide extends in an exterior area outside of the helix.” Neither Blechle nor Kraft alone or in combination disclose or suggest that a “holder includes the helix” and a “holder guide” in the manner recited. The Action references Kraft at col. 8, lines 25-67. However, this referenced section of Kraft lacks the recited “helix” and “holder guide.” Thus, it is respectfully submitted that the claim is further allowable.

Claim 56

Claim 56 depends from claim 53 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites “the holder includes a pair of rotatable helixes.” Neither Blechle nor Kraft alone or in combination disclose or suggest that a “holder includes a pair of rotatable helixes” in the manner recited. The Action references Kraft at col. 5, lines 21-37; col. 7, lines 26-38; and col. 8, lines 25-67. However, these referenced sections of Kraft lack the recited “pair of rotatable helixes.” Thus, it is respectfully submitted that the claim is further allowable.

Claim 59

Claim 59 depends from claim 53 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites that “the holder includes a rotatable helix.” The claim further recites “extending a limiting member in the inside area of the helix, wherein the limiting member is operative to prevent a medical item from passing through the inside area of the helix absent rotation of the helix.” Neither Blechle nor Kraft alone or in combination disclose or suggest a “rotatable helix” and a “limiting member” in

the manner recited. The Action references Kraft at col. 8, lines 25-67. However, this referenced section of Kraft lacks the recited “rotatable helix” and “limiting member.” Thus, it is respectfully submitted that the claim is further allowable.

Claim 62

Claim 62 depends from claim 61 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites “dispensing a first medical item including a supporting card from the first dispenser module.” The claim further recites “dispensing a second medical item including a generally cylindrical liquid holding container from the second dispenser module.” Neither Blechle nor Kraft alone or in combination disclose or suggest the “dispensing” of first and second medical items in the manner recited. Thus, it is respectfully submitted that the claim is further allowable.

The Pending Claims Are Not Obvious in View of the Applied Art

In the Action claims 40-43, 46-47, 49-54, and 57-62 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Higham in view of Blechle. These rejections are respectfully traversed.

Applicants traverse these rejections on the grounds that Applicant’s claims recite features and relationships which are neither disclosed nor suggested in the prior art, and because there is no teaching, suggestion or motivation cited so as to produce Applicant’s invention. The features recited in Applicant’s claims patentably distinguish over the applied references.

Claims 40-43, 46-47, 49-54, and 57-62
Patentably Distinguish Over the Applied Art

The Office Action admits that Higham does not disclose “closing the door”; a “cylindrical holding container contains a liquid”; “providing the holder with a plurality of items arranged in a stack”; “engaging a follower in engagement with the stack”; and “adding a plurality of medical items to the holder in side by side relation to a stack.” The Office Action asserts that Blechle discloses such features. The Office Action further asserts that it would have been obvious for Higham to have such features.

The Applicants disagree. Higham lacks many of the recited features. Higham does not disclose or suggest the features and relationships that are specifically recited in the claims. Blechle lacks the capability of adding the recited features that are not found in Higham. Neither Higham nor Blechle alone or in combination disclose or suggest the features and relationships that are specifically recited in the claims.

As nothing in the cited references disclose nor suggest the features and relationships that are specifically recited in the claims, and because there is no teaching, suggestion or motivation cited for combining features of the cited references so as to produce Applicant’s invention, it is respectfully submitted that these claims are allowable. Therefore, it is respectfully submitted that the 35 U.S.C. § 103(a) rejections have been overcome.

Claims 40, 42-43, 46-47, 49-54, 60-61

Applicant’s arguments concerning the Higham reference discussed above in support of the patentability of claims 40-43, 46-47, 49, 52-54, 57-58, 60, and 62 are incorporated by reference as if fully rewritten herein. Blechle does not disclose or suggest the features or relationships that are not found in Higham. Applicant’s arguments concerning the Blechle

reference discussed above in support of the patentability of claims 40, 42-43, 49-51, and 60-61 are incorporated by reference as if fully rewritten herein.

It is noted that claim 59 was not previously rejected by either the single reference of Higham or the single reference of Blechle. Therefore, the Action has admitted that neither Higham nor Blechle disclose or suggest the subject matter of claim 59.

As previously discussed, in the operation of Higham, an item can be manually placed into or removed from a particular receptacle (36) of an open drawer (32) (col. 16, lines 37-45; col. 18, lines 43-47). Higham does not disclose or suggest a dispenser module including a “dispenser mechanism.” Higham does not disclose or suggest that a “dispenser mechanism” is “selectively operable to dispense medical items from the holder.” Higham’s manual removal of items specifically teaches away from using the recited “dispenser mechanism” to dispense medical items.

As previously discussed, Blechle shows a cartridge (90) for insertion into a dispenser (60). Stacked medication containers (108) are contained in the interior storage space (102) of the cartridge (90). Upon actuation of the solenoid (68), the stepped portion (84) urges the medication container (108) resting on the dispensing platform (86) out the aperture (88) where gravity induces it to fall to the drawer (28).

In Higham an item is manually placed or removed. Therefore, it would not have been obvious to modify Higham as alleged. In Higham a medical item is not capable of being dropped or falling by gravity to a lower location. In Higham a drawer is opened and an item is manually removed. In Higham there is no dispenser mechanism because the items are manually removed

from the drawer. Hence, Higham has no need for the recited dispenser mechanism and there is no possible motivation to include such a feature therein.

The solenoid system of Blechle is contrary to the manual system of Higham. Any assertion that one could incorporate a dispenser mechanism into Higham, is clearly an attempt at hindsight reconstruction of Applicants' claimed invention, which is impermissible.

Furthermore, the Action has not cited any teaching or motivation in the applied art, or explained how a dispenser mechanism could be incorporated into the manually operated drawer system of Higham. Furthermore, the Action has not explained or cited any motivation why one skilled in the art would attempt to incorporate a dispenser mechanism into the manually operated drawer system of Higham. When a drawer of Higham is opened, then the items are readily accessible. A dispenser mechanism, even if it were somehow possible to install in Higham, would serve no purpose. Thus, Higham would not be improved with the addition of a dispenser mechanism. Clearly, one skilled in the art would not have no motivation attempt to incorporate a dispenser mechanism into the manually operated drawer system of Higham. Any alleged modification involving a dispenser mechanism, if it were somehow even possible, would appear to destroy the utility or advantage of Higham and render the disclosed drawer system of Higham inoperable.

A reference teaching away from the recited invention does not support prima facie obviousness. It is improper to reconstruct the invention from the disclosure of the Applicants. An obviousness rejection cannot be based on a combination of features in references if making the combination would result in destroying the utility or advantage of the device shown in the

prior art references. *In re Fine*, 5 USPQ2d 1598-99 (Fed. Cir. 1988). It is respectfully asserted that the rejection is improper for this reason.

In regard to Applicants' claims 52 and 53, Higham also lacks the recited path and delivery area. The arrangement of Higham's drawer system cannot reasonably be modified to include the recited features and relationships of a path and a delivery area. Therefore, even if Blechle disclosed these features and relationships, it would not have been obvious to have included these features and relationships into Higham.

Neither Higham nor Blechle alone or in combination disclose or suggest the features and relationships that are specifically recited in the claims.

As nothing in the cited art discloses nor suggests the features and relationships that are specifically recited in the claims, and because there is no teaching, suggestion or motivation cited for combining features of the cited references so as to produce Applicant's invention, it is respectfully submitted that the claims are allowable for these reasons. Therefore, it is respectfully submitted that the 35 U.S.C. § 103(a) rejection has been overcome.

Features and relationships recited in Applicants' dependent claims further distinguish over the cited art.

Claim 50

Claim 50 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites that "medical items are biased to move by gravitational force" and "providing a follower in engagement with the stack, wherein in the first position the follower provides additional biasing force on the stack." Neither Higham nor Blechle alone or in combination, disclose or suggest medical items "biased to move

by gravitational force” and a “follower in engagement with the stack” in the manner recited.

Thus, it is respectfully submitted that the claim is further allowable.

Claim 51

Claim 51 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites that “medical items are biased to move by gravitational force” and a “movably positionable guide extending adjacent the stack” and a “generally cylindrical rotatably movable follower, including at least one annular groove, in operative engagement with the stack.” Neither Higham nor Blechle alone or in combination disclose or suggest medical items “biased to move by gravitational force” and a “movably positionable guide” and a “generally cylindrical rotatably movable follower” in the manner recited. Thus, it is respectfully submitted that the claim is further allowable.

Claim 59

Claim 59 depends from claim 53 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites that “the holder includes a rotatable helix.” The claim further recites “extending a limiting member in the inside area of the helix, wherein the limiting member is operative to prevent a medical item from passing through the inside area of the helix absent rotation of the helix.” Neither Higham nor Blechle alone or in combination disclose or suggest a “rotatable helix” and a “limiting member” in the manner recited. Thus, it is respectfully submitted that the claim is further allowable.

Claim 61

Claim 61 is an independent method claim. The claim specifically recites first and second dispenser modules “in movably supporting connection with the enclosure” through first and

second guide arrangements, wherein the guide arrangements are adapted to guide the dispenser modules “during movement.” Neither Higham nor Blechle alone or in combination disclose or suggest a “guide arrangement” capable of supporting and guiding a dispenser module during dispenser module movement, in the manner recited. Furthermore, even if Blechle disclosed these features and relationships, it would not have been obvious to have included these features and relationships into Higham. Inclusion of these features and relationships into Higham would destroy the utility or advantage of Higham and render the disclosed device of Higham inoperable.

Neither Higham nor Blechle alone or in combination disclose or suggest a dispenser module movable while in supporting connection with the enclosure. Furthermore, neither Higham nor Blechle alone or in combination disclose or suggest guide arrangements “interchangeably engageable to support either the first or second dispenser modules” in the manner recited. Furthermore, as previously discussed, Higham does not disclose or suggest dispenser modules that are “selectively operative to dispense medical items.” The above arguments against modifying Higham to be “selectively operative to dispense medical items” are incorporated by reference as if fully rewritten herein.

As nothing in the cited art discloses nor suggests the features and relationships that are specifically recited in Applicants’ claim, and because there is no teaching, suggestion or motivation cited in the Action for combining features of the cited references so as to produce Applicant’s invention, it is respectfully submitted that the claim is allowable for these reasons. Therefore, it is respectfully submitted that the 35 U.S.C. § 103(a) rejection has been overcome.

Allowable Subject Matter

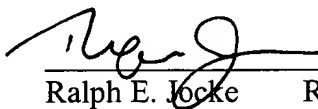
Claim 45 has not been rejected on the basis of any cited art. However, claim 45 was rejected under 35 U.S.C. § 112, second paragraph. Hence, the Action indicates claim 45 would be allowable if the rejections under 35 U.S.C. § 112, second paragraph were overcome. It is respectfully submitted that the 35 U.S.C. § 112, second paragraph, rejections have been overcome, and claim 45 is now allowable.

Conclusion

Each of Applicants' pending claims specifically recite features and relationships that are neither disclosed nor suggested in any of the applied art. Furthermore, the applied art is devoid of any such teaching, suggestion, or motivation for combining features of the applied art so as to produce Applicant's invention. Allowance of all of Applicants' pending claims is therefore respectfully requested.

The undersigned will be happy to discuss any aspect of the Application by telephone at the Examiner's convenience.

Respectfully submitted,



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